

### **REMARKS**

By way of summary, Claims 1-3, 6, and 12-40 were pending. The Office Action dated July 23, 2008, rejected Claims 1-3, 6, 12, and 31-40 and indicated that Claims 13-30 were allowed. By this Amendment, Claim 1 and 31 have been amended without prejudice or disclaimer, and dependent Claims 41-56 have been added, each of which depend from a previously allowed independent claim. Accordingly, Claims 1-3, 6, and 12-56 are now pending in this application, and Applicant respectfully submits that these claims are now in condition for allowance.

### **Allowed Claims**

The Office Action indicated that Claims 13-30 were allowed. Applicant respectfully notes that, although dependent Claims 24-30 were indicated as allowed, these claims depended from rejected base Claim 1. However, as explained herein, Applicant respectfully submits that these claims, in addition to amended Claim 1, are in condition for allowance.

Independent Claims 13, 22, and 23 were indicated as allowed in the Office Action. By this amendment, dependent Claims 41-56 have been added, each of which depends from one of these allowed independent claims. Applicant respectfully submits that no new subject matter has been introduced by these amendments and that new dependent Claims 41-56 are in condition for allowance for at least the same reasons as their respective allowed base claim.

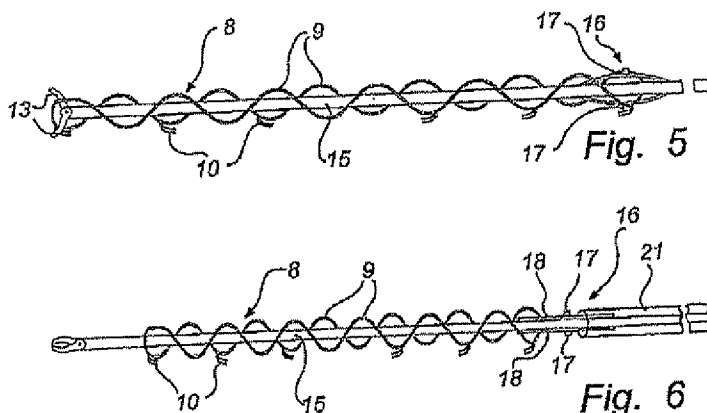
### **Claim Rejections under § 102 and § 103**

The Office Action rejected Claims 1, 2, 6, 12, and 31-40 under § 102(e) as being anticipated by U.S. Publication No. 2001/0018611, to Solem et al., and Claim 3 under § 103(a) as being unpatentable over Solem. Applicant respectfully submits that amended independent Claims 1 and 31 are in condition for allowance over Solem at least because Solem does not teach or suggest all the limitations of Claims 1 and 31.

#### **Amended Independent Claim 1**

Amended independent Claim 1 now recites, in part, that the forming member is “configured to remain coupled to the implant in the coronary sinus after the implant is detached from the delivery catheter.” Applicant respectfully submits that Solem does not teach or suggest

a forming member that is configured to remain coupled to the implant in the coronary sinus after the implant is detached from the delivery catheter. In contrast, the rod 15 of Solem, identified in the Office Action as the forming member, is released from the implant during implantation of the implant: "A catheter 21, shown in FIG. 6, is pushed forward [and] the guiding wire and the rod 15 for releasing the elongate body 8 from the locking means 16 by pressing the spring blades 18 towards the rod 15. This movement releases the knobs 17 as well as the arms 13 from engagement with the elongate body 8 . . . ." Solem, Paragraph 51. Figures 5 and 6, which depict detachment of the rod 15 from the implant, are reproduced here for reference.



Applicant respectfully submits that Solem does not teach or suggest a forming member that remains coupled to the implant after the implant is detached from the delivery catheter and that Solem does not anticipate amended independent Claim 1. Accordingly, Applicant respectfully requests withdrawal of the § 102 rejection of Claim 1. Additionally, Claims 2–3, 6, 12, and 24–30 depend from Claim 1 and are patentable for at least the same reasons set forth with respect to Claim 1, in addition to the patentable subject recited in each of the dependent claims. Accordingly, Applicant respectfully requests withdrawal of the § 102 and § 103 rejections with respect to these dependent claims.

Applicant respectfully disagrees with the assertion in the Office Action that lines 9–13 and the final three lines of Claim 1, and Claims 39 and 40 entirely, "describe intended use recitations." The language in question in these claims, although involving some functional phrases, clearly impart structural limitations on the systems claimed in Claims 1, 39, and 40. However, irrespective of this issue, Applicant respectfully submits that Claim 1 is in condition for allowance at least for the reasons set forth above. Additionally, Applicant respectfully submits that dependent Claims 39 and 40 are in condition for allowance at least for the reasons set forth below in the discussion of amended independent Claim 31, from which Claims 39 and 40 depend.

*Amended Independent Claim 31*

Amended independent Claim 31 now recites, in part, that the forming member is “configured to remain coupled to the implant in the coronary sinus after the implant moves from the first configuration to the second configuration.” Applicant respectfully submits that Solem does not teach or suggest a forming member that remains coupled to the implant in the coronary sinus after the implant moves from the first configuration to the second configuration. As explained above, the rod 15 of Solem that is identified in the Office Action as constituting the forming member is released from the implant during implantation of the implant and does not remain coupled to the implant after the implant moves from the first configuration to the second configuration.

Applicant respectfully submits that Solem does not teach or suggest all the limitations recited in amended independent Claim 31 and that, consequently, Solem does not anticipate amended independent Claim 31. Accordingly, Applicant respectfully requests withdrawal of the § 102 rejection of Claim 31. Additionally, Claims 32–40 depend from Claim 31 and are patentable for at least the same reasons set forth with respect to Claim 31, in addition to the patentable subject recited in each of the dependent claims. Accordingly, Applicant respectfully requests withdrawal of the § 102 rejection with respect to these dependent claims.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable action on this application. If any questions remain, the Examiner is cordially invited to contact the undersigned attorney so that any such matters may be promptly resolved.

Any remarks in support of patentability of one claim should not necessarily be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not necessarily be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully reserves the right to traverse any of the Examiner’s rejections or assertions, even if not discussed herein. Applicant respectfully reserves the right to challenge later whether any of the cited references are prior art. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present Application and are without prejudice to the presentation or assertion, in the future, of

claims relating to the same or similar subject matter. Applicant reserves the right to contest later whether a proper reason exists to combine prior art references.

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Respectfully submitted,



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